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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

US010545 / PKRX 2 00007

I certify that this PRE-APPEAL BRIEF REQUEST FOR REVIEW and accompanying documents in connection with U.S. Serial No. 10/014,228 are being filed on the date indicated below by electronic transmission with the U.S. Patent and Trademark Office via the electronic filing system (EFS-Web).

on \_\_\_\_\_

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Typed or printed name Elissa Delucy

Application Number

10/014,228

Filed

December 11, 2001

First Named Inventor

A. COLMENAREZ, et al.

Art Unit

2621

Examiner

D. CHEKAJ

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☐

attorney or agent of record.

Registration number \_\_\_\_\_

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attorney or agent acting under 37 CFR 1.34.

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Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

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\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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The present application relates to a surveillance system and method which recognizes potential shoplifters and alerts security. The alerted security could be a person watching the video monitors, which person would make a final determination on whether shoplifting is occurring before alerting security on the floor. One behavioral pattern disclosed in this application which is symptomatic of a potential shoplifter is looking around continuously (present application, page 6, lines 19, 22).

There is another aspect disclosed in the present application at page 10, lines 5-10. In this aspect, a security camera is positioned opposite the door or entrance to take images of the faces of patrons entering the store. Because such images are compared with a database, high resolution or zoomed-in images would be helpful. However, the concept of collecting zoomed-in images of the faces of patrons entering the store is not set forth in any of the independent claims.

The Examiner's primary reference Aviv (US 6,028,626) is directed to a detection and surveillance system which automatically recognizes violent criminal events, particularly a mugging (column 5, line 46), physical assaults (column 9, line 16), car-jacking (column 10, line 45), and criminal physical acts or verbal assaults (column 13, lines 17-18). Aviv uses high and low resolution TV cameras and microphones to monitor for sounds (words) or physical behavior which fits files of criminal acts (column 9, lines 47-58; column 14 – column 15, line 44). These sections describe numerous body, hand, arm, etc. movements for which one might monitor as being indicative of an assault. Significant by its absence is any suggestion that one should monitor for continuous head movement for more than a predetermined amount of time.

Indeed, the Examiner acknowledges that Aviv fails to teach recognizing movement of the head of a shopper (April 12, 2006 Amendment; page 9, last two paragraphs and page 10, first two paragraphs; January 12, 2006 Office Action; page 3, lines 5-6; July 14, 2006 Office Action; page 3, second full paragraph, lines 15-16).

To cure this acknowledged deficiency, the Examiner cites Simerly (US 6,954,859), column 15, lines 31-35. Specifically, a camera is positioned opposite a doorway and zooms in on and takes close up photographs of the face (or other body part) as each person entering moves through such doorway. Exactly what this

recitation adds to Aviv (column 5, lines 1-6) which already suggests zooming in on action of interest with higher resolution cameras is unclear.

It is submitted that if Simerly (column 15, lines 31-32) would teach anything to one reading Aviv, it would teach that Aviv's high resolution camera should zoom in and take detailed photographs of the faces or other body parts of people. But, this is something Aviv already does (col. 4, line 64 – col. 5, line 14).

Perhaps if one were to add the teachings of column 15, lines 31-35 of Simerly to Aviv, one would zoom in and take close-up images of the faces of all people entering the surveillance area. Although Simerly, in other areas, discusses triggering an alert or an alarm in response to various actions or behaviors, the paragraph at page 15, lines 8-47 of Simerly is describing a function which merely monitors and records a zoomed-in image of the face or other portion of the human body of each person entering the door. If one were to apply this concept to Aviv, it is submitted that it would teach one to adapt Aviv to zoom in on each person entering the surveillance area and recording a zoomed-in image of their face. (If the zoomed-in area is a section of a public street or place, then this would have a striking resemblance to George Orwell's 1984).

The Examiner asserts that column 15, lines 31-32 of Simerly teach tracking and zooming in on a face or other part of the body. That is not the claim recitation. Claim 9, for example, calls for "recognizing continuous movement of a head". Column 15, lines 31-32 may teach zooming in on the face of a person, and continuing to focus on the face even if the face moves, but it does not teach or fairly suggest recognizing continuous movement of the head.

As stated above, one distinguishing characteristic of a shoplifter recognized by the present inventors that a shoplifter's head commonly undergoes continuous movement for a longer period of time than a normal shopper (page 6, lines 19-22). Perhaps, this is because the shoplifter is more interested in the location of security and store personnel; whereas, most consumers are more interested in the merchandise. Modifying Aviv such that it zoomed in on the face of people, particularly people entering a selected door or portal and continuing to image that person's face over a fixed short distance would not meet the limitations of claim 9. There would still be no recognition that a pattern recognition means should look for or

recognize continuous motion of a head for a predetermined amount of time, or that such continuous motion of the head for the predetermined amount of time should be a behavioral pattern associated with the set of predefined suspicious behaviors that trigger a notification reaction.

Further, claim 9 calls for a means for notifying that this suspicious behavior pattern has been observed. By distinction, Simerly at column 9, lines 31-35 merely collects facial images, such imaging actions trigger no notification or alarm reaction.

Because neither Aviv nor Simerly teach or fairly suggest that "recognizing continuous movement of a head of a particular shopper for a predetermined amount of time" should be a behavioral pattern associated with the set of predefined suspicious behaviors, the references do not place the invention of claim 9 in the possession of the public.

Claim 12 calls for the behavioral pattern means to recognize a pair of behavior patterns - carrying a bag and continuous head movement for a predetermined amount of time. Claim 16 is a method claim which positively recites identifying suspicious behavior including continuous head movement and acting on such identification by notifying security. Claim 26 sets forth a method that calls for notifying security in response to the identified behavioral pattern of head movement for a predetermined amount of time. Aviv, it is agreed, does not perform this method step. Simerly's embodiment that merely photographs people coming through a door (referenced by the Examiner) does not include either security notification or triggering an event (analogous to security notification) in response to head movement for a predetermined time. Claim 27 is a method claim limited to the retail store environment, an environment not addressed by Aviv. Claim 27 positively recites two behavioral patterns that are not suggested by Aviv or Simerly, specifically, recognizing a shopper staying in one aisle for a predetermined time and a shopper's head movement for a predetermined time, and notifying security when such a behavioral pattern is recognized. Neither of these behavior patterns is addressed or fairly suggested by Aviv or Simerly. Claim 28 is directed to a similar method in which the identified behavioral patterns include carrying a bag and continuous head

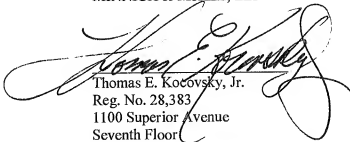
movement, neither behavior pattern being suggested by Aviv or Simerly as a pattern to trigger security notification.

As pointed out in the Amendment of April 12, 2006, at page 9, fourth paragraph, under MPEP 2142, the prior art reference(s) must teach or suggest all claim limitations for the Examiner to make a *prima facie* case of obviousness.

Because all claims positively recite the limitations including the positively recited behavioral patterns discussed above as triggering security notification, it is submitted that all claims are allowable.

Respectfully submitted,

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MINNICH & McKEE, LLP

A large, stylized handwritten signature in black ink, which appears to read "Thomas E. Kocovsky, Jr.", is written over the typed name and address.

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